

You should know...



North Dakota Public Service Commission

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North Dakota Public
Service Commission

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Selling Grain?

*Know your rights and responsibilities regarding
grading disputes, payment, storage rates, and handling fees.*

NO GRAIN LICENSE— NO BOND PROTECTION

- ⌘ **Bond coverage does not exist if a buyer is not licensed.** If grain is sold to an unlicensed buyer and if the buyer does not pay for the grain, there is no bond coverage available to help pay the seller. Court action may be a farmer's only recourse if an unlicensed buyer fails to pay for grain. **Therefore, farmers are strongly encouraged to check to ensure that the buyer is licensed. Warehouses and grain buyers must be licensed and bonded.** Unlicensed buyers are operating illegally.
- ⌘ In North Dakota, bond requirements are based on the physical size of an elevator or on the amount of grain that a grain buyer handles. **Even if the buyer is licensed and bonded, there is no guarantee that farmers will be fully reimbursed if a buyer becomes insolvent.** If the buyer does not have enough grain and bond assets available to satisfy all valid grain claims, available funds are distributed on a prorated basis.
- ⌘ Farmers must also be aware that **bond coverage may not be available if grain is sold to a company that is located outside the state.** If grain is sold to out-of-state entities, the laws of the state in which the buyer is located may govern the transaction. Farmers may find that they have far less protection in those states than they do if the grain was sold to a company that is licensed in North Dakota.
- ⌘ **To find out if a warehouse or grain buyer is licensed in North Dakota, visit the Public Service Commission web site at www.psc.state.nd.us or call (701) 328-4097.**

CREDIT-SALE CONTRACTS AND INDEMNITY FUND

- ⌘ **Delayed price and deferred payment contracts are examples of credit-sale contracts.** State law defines credit-sale contracts as written grain sale contracts that provide that the sale price may be paid more than 30 days after the delivery or release of the grain for sale.

Title to grain will pass from the farmer to the buyer when a credit-sale contract is signed, unless the farmer has signed a contract providing for the title to the grain to pass to the buyer at the time of delivery.

Farmers should be aware that credit-sale contracts are not protected by the buyer's bond unless the buyer has secured independent bond coverage. If the buyer has secured independent bond coverage, the amount of bond available should be identified in the contract disclaimer. If no credit-sale contract bond coverage is available, disclaimer language concerning the lack of bond coverage must be printed in bold type immediately above the signature block on the contract. The disclaimer statement must contain the following or similar language:

**THIS CONTRACT IS NOT PROTECTED BY
BOND COVERAGE IN THE EVENT OF THE
BUYER'S INSOLVENCY.**

Although there may not be bond protection afforded to those entering into credit-sale contracts, a fund was created by the 2003 Legislature that provides protection for unpaid credit-sale contracts executed after August 1, 2003, in grain elevator or grain buyer insolvencies. Each patron's coverage is limited to 80% of the patron's unpaid credit-sale contracts with the insolvent buyer, up to a maximum payout of \$280,000.

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(cont.)*

FARMERS--CREDIT-SALE CONTRACTS MUST BE SIGNED

State law requires that scale tickets be issued for every load of grain received and that all scale tickets be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within 30 days after the grain is delivered to the warehouse. State law also requires every grain buyer, upon receiving grain, to issue a scale ticket or comparable receipt and shall pay the farmer within 45 days of receipt of the grain.

A farmer, who makes the decision to sell grain and take payment more than 45 days after the delivery or release of the grain for sale, must enter into a credit-sale contract with the grain warehouse where the grain is delivered or with the grain buyer that received the grain. A credit-sale contract must be signed to be valid and enforceable. If credit-sale contracts are not signed within the required time, grain warehouses and grain buyers are at risk of having a complaint filed against them.

Farmers are encouraged to work with their grain warehouses and grain buyers to get all credit-sale contracts signed within the time permitted by state law.

STORAGE RATES AND HANDLING FEES

- ☞ State law does not prescribe grain elevator storage rates and handling fees. **Each state licensed grain warehouse sets its own storage rates and redelivery fees** (i.e. "in" and "out" charges).
- ☞ **Licensees cannot, however, unjustly discriminate among patrons.** State licensed grain warehouses must file their proposed rate schedule with the Public Service Commission; it must also be posted at the warehouse. The rates may be revised upon filing with the PSC.
- ☞ **Storage rates must be stated on warehouse receipts.** If a warehouseman changes his rates, the rates that were in effect when a warehouse receipt was issued are the rates that apply to

that storage contract. Warehouse receipts on beans expire on April 30 of each year; other grain receipts expire on June 30. If expired receipts are reissued, the storage rate in effect at the time is the rate that will apply to the renewed receipt.

- ☞ **Farmers should not confuse storage rates with credit-sale contract service or handling charges (delayed price and deferred payment-type transactions). These fees are not regulated and are governed by the terms of the contract that is entered into by the buyer and the seller.**

GRADING DISPUTES - DON'T WAIT OR YOU'LL BE TOO LATE

- ☞ State law does not regulate elevator purchase prices, premiums, or discounts. State law does provide, however, that warehousemen may not unjustly discriminate among patrons.
- ☞ If a farmer does not agree with an elevator's test results he has the right to ask that an independent test be performed on his grain. He must, however, **ask for the test when the grain is delivered.**
- ☞ To initiate the process, the farmer must ask for the independent test. The farmer and the warehouseman must then draw a **mutually agreeable sample** of the load. This sample must be sealed in a container and sent to a **federally licensed inspection service** or to some other mutually agreed to third party for testing.
- ☞ **The buyer and the seller are both obligated to accept the results of the independent test. The farmer is responsible for the cost of the tests.**
- ☞ State law requires that warehousemen and grain buyers post a notice concerning the law's provisions concerning the resolution of grain grading disputes. To obtain a copy of the notice, visit the PSC's website at www.psc.nd.gov or call (701) 328-4097.